

M I N U T E S O F M E E T I N G

WATER RESOURCES BOARD

March 3, 1980

The State Water Resources Board met on March 3, 1980 at approximately 9:15 a. m. at 1201 Greenbrier Street, Charleston, WV with Chairman John C. Ailes presiding. Members attending were Forrest Kirkpatrick, Dr. Edward Crum, Larry George and Dr. Donald Brannon. They were joined a short time later by Robert Pollitt and Karen Watson, Assistants to the Attorney General, David Flannery - Attorney at Law, Ray George with the EPA Wheeling Field Office and by Paul Ware of the Coal Section and Randy Sovic of the Industrial Section. (John Purbaugh, Attorney at Law stopped by for a short time).

The first order of business was the formal motion of Fran Hunter being reinstated as the Board Secretary with all the duties and the powers as of February 5th - motion made by Larry George and seconded by Ed Crum. Passed unanimously.

The second matter of business was brought to the Board's attention by Dr. Brannon who suggested that a letter of appreciation be sent to Cherrie Kirk. Motion made by Dr. Brannon and seconded by Dr. Crum - all response was 'aye'. Letter to be written by Chairman Ailes.

Next on the agenda was the receipt of a copy of the budget. Mr. Kirkpatrick questioned the line item 037 'miscellaneous' and it was reported that this was payment to the court reporter. It was also reported by the secretary that Mr. Bill Byus, Accountant, had already requested transfer of funds from the Reclamation Board of Review to the State Water Resources Board's budget - and that the heading on the report of the budget was correct but the total operating amount was not correct but would have it for our next meeting if at all possible (or sooner) and

a copy would be dispatched to each Board member forthwith.

Discussion then turned to the first item on the "News Release" of the adoption of additional rules of procedure for the State Water Resources Board. Bob Pollitt, Assistant Attorney General, who drafted the 'proposed additional regs' commented they had not finalized them, that is, by filling in the blanks that were left on the proposed draft and stated to the Board that all it was was a DRAFT and that parts of it were to be rewritten and he suggested in order to shorten hearings and to allow for better preparation of both sides in a hearing the Board adopt some type of preliminary rules of procedure concerning pre-trial depositions and interrogatories between parties and stated there is precedent for this in State government citing the Public Service Commission having done the same thing previously. The Board decided to wait for a complete draft before adoption -- no hearings are necessary on 'rules of procedure' just be adopted and duly filed with the Secretary of State. Dr. Crum made notation of several corrections. Bob reminded the Board that these rules were for the purposes of discovery and hopefully after the taking of depositions or interrogatories that the issues may be narrowed, such as in the circuit courts of the State. Mr. Ailes brought up the subject on the witness being present for questioning in a hearing and the statute stating the length of time or dates involved to set up a hearing and suggested a proviso be put in our rules that an appellant is entitled to a hearing within 20 days. It was left up to Bob to come up with a set of rules of procedure for the Board and a motion was made by Dr. Crum and seconded by Mr. Kirkpatrick - all responded with 'aye'.

Next was the third item of the "News Release" dated February 21, 1980 - the disposition of the Upper West Fork River Watershed Association, Inc. and Kyle and Icie Bush, Intervenors/Appellants vs Chief - Appeal No. 125.

Larry George made the suggestion that this be tabled for a couple of weeks for the reason that for this hearing from a practical standpoint it was hard to question a hearing document and the second reason was that it might not be a proper hearing in that only one person was present and as no hearing examiner was authorized. Mr. George made the motion for the reargument from counsel for the parties on the grounds that the Board lacks jurisdiction - this was seconded by Mr. Kirkpatrick - motion made and all votes were 'aye'. Discussion was held on this and the date was finally set for March 25, 1980 at 9:00 a. m.

Karen Watson, Assistant Attorney General, brought the Board up-to-date on the progress made by Professor McGinley, Bob Pollitt and herself concerning the legal aspects of the Administrative Regulations that they have been working on. Bob stated that there were 10 major legal areas to look at and hopefully by the time the Board's drafted regs. would be ready to go to the public they would have legal briefs on each of the areas involved to give the Board. She had suggested to Mr. Ailes that the Board go through the regs. and review them from a technical standpoint and the going through the comments from the last hearing along with the Division of Water Resources' input and this be done concurrently. Mr. Ailes mentioned the regs. being divided into chapters, a chapter on general regs, # 2 on Water Quality, # 3 on special and 4th the NPDES regs. and that an effective date could be put in or set separately for each chapter.

The New River Company was then discussed and it was related that Mr. Paul Ware of the Coal Section was concerned (along with the Board members) of the non-submission of weekly reports that were part of the first ORDER issued in October. The attorney representing New River was to be contacted on this. A copy of a new extension deadline (ORDER)

was presented to the Board for their approval which had been agreed upon by both counsel for the appellant and the appellee. A motion was made by Mr. Kirkpatrick to approve the new extension ORDER - seconded by Dr. Crum. Motion carried. Bob Pollitt also reported to the Board the status of New River's case which is presently in the Circuit Court of Kanawha County -- hopefully the Judge will rule on it within the next 60 days.

The final items were the pending cases in which Bob Pollitt and Ray George of EPA participated. Mr. Ailes opened the discussion with the reason the variances are pending -- that we are trying to work out with EPA some method of putting a variance procedure into the regulations so that variance requests could be considered - as EPA would not approve them - this was discussed in length and all old variances will be held in abeyance until something can be worked out between the Board and EPA. A system had never been worked out between the two on how to get confirmation from EPA on the old ones -- the Board had always had the Chief's approval before any variance could be considered.

Ray George suggested perhaps the hang-up was EPA and took a copy of the variance requests and will approach EPA on them and get back to us and that perhaps under the State-EPA contract done yearly (by Sept. this year) the "SCA" agreement, a trade-off could be worked out.

All future variance requests will hopefully be incorporated into the new regulations under certain sections or chapters. (Examples of problems that companies encounter were described by Mr. Ailes and Randy Sovic - Industrial Section Head).

The appeal list was then reviewed and Dr. Crum inquired as to the terms closed, dismissed or dissolved. I (secretary) stated that was usually the final statement in which the appeal was closed - the terms closed, dismissed or dissolved -- they were terminated - 'not used' meaning

what it says.

In some cases a problem arises when the Board is not notified by the Division when the permit has been issued and the issue has then become moot. And in some instances, the cases were continued by the parties and hopefully, will not go to appeal. Mr. Ailes will meet with the Chief to set up a policy in which the Board will be advised every four months or so as to the status of pending appeals and the secretary will dispatch the information forthwith to Board members.

In the cases of Borgman Coal Co. (Appeal No. 103) and Olga Coal Co. (Appeal No. 110) a motion was made by Larry George and seconded by Dr. Crum (motion carried) to write a letter to the companies involved that the Board will be meeting at 9:00 a. m. March 25, 1980, and their presence (or their representative's) is requested as their case will be discussed and at that time a decision will be made as to setting a date for a formal hearing. In the case of the Olga Coal Co., the withdrawal of their stay will also be considered. (Mr. Pollitt explained the Olga Coal case to the Board and Paul Ware - Coal Section - related Borgman's problem).

In the case of the Town of Fayetteville (Appeal No. 109), Mr. Ailes stated that he is "sitting on that" and explained the situation - Prime Builders, Inc. was issued a permit - and in this case, after all testimony was taken, the Board upheld the Chief. This involved a Public Service District (PSD) being in the area and the question of the builders hooking onto it. A motion was made by Larry George and seconded by Dr. Crum (motion carried) to have the Division make an inspection of this facility - if it were ever built and if the Wolf Creek PSD was ever extended to this facility to incorporate it into it's system.

The request is to be directed to Mr. Jess Malcolm, Deputy Chief, Enforcement, and written information be submitted at the next meeting of the Board (March 25, 1980). Upon receipt of the data needed, Mr. Ailes

will complete the findings of fact and conclusions of law as he has most of it completed.

Bob Pollitt stated he will check with Leonard Knee (Assistant Attorney General) on the Riverton Coal Co. (Appeal No. 120) - the Board having received the administrative file on this and will report back to the Board.

He will also speak to Ruth Ann McQuade on the Kingwood Water Co.'s appeal re: Patriot Mining Co. - water company is of the opinion their drinking water supply is effected from the coal preparation facility.

Bob stated that he will speak to the other attorneys involved in any case in which they are involved and get a report to the Board as soon as possible or by March 25th at the time of the next Board meeting and let the Board know "what's happening" from their end.

At this time the meeting was adjourned.

Respectfully submitted,

your secretary

attachment - copy of Notice filed in  
Secretary of State's Office